FILE COPY
( D/

FILED
JAN 18 1973
MICHAEL SOBAK, JR., CLERK

IN THE

# Supreme Court of the United States

**October Term, 1972**

**No. 72-630**

PAUL HALL, individually and as President or AL KERR, as Secretary Treasurer, or EARL SHEPARD, as Vice President, or CAL TANNER, as Executive Vice President of the Seafarers International Union of North America—Atlantic, Gulf, Lakes and Inland Waters District,

*Petitioners,*

v.

JOHN COLE,

*Respondent.*

## PETITIONERS' REPLY TO RESPONDENT'S MOTION TO DISMISS THE GRANTED WRIT OF CERTIORARI

HOWARD SCHULMAN
1250 Broadway
New York, New York 10001
*Attorney for Petitioners*

*Of Counsel:*

SCHULMAN, ABARBANEL & SCHLESINGER
New York, New York

IN THE

# Supreme Court of the United States

**October Term, 1972**

**No. 72-630**

PAUL HALL, individually and as President or AL KERR, as Secretary Treasurer, or EARL SHEPARD, as Vice President, or CAL TANNER, as Executive Vice President of the Seafarers International Union of North America—Atlantic, Gulf, Lakes and Inland Waters District,

*Petitioners,*

v.

JOHN COLE,

*Respondent.*

## PETITIONERS' REPLY TO RESPONDENT'S MOTION TO DISMISS THE GRANTED WRIT OF CERTIORARI

Almost one month after the granting of the Writ, Respondent moves for the Writ's dismissal, premised upon two Court of Appeals decisions rendered long prior to the submission of the Petition for the Writ of Certiorari, but which, " * * * were unknown to counsel at the time Respondent's brief in opposition to the Petition was submitted." (p. 1 Resp. motion). The motion should be denied.

1. Respondent's motion is in contravention of this Court's rule 24-2.

2. Contrary to Respondent's submission, the Sixth Circuit in *Sertic* v. *Cuyahoga Lakes etc., Carpenters' District Council,* 459 F.2d 579, 583, decided May 18, 1972, did not hold that its prior decision in *McCraw* v. *United Association of Journeymen etc.,* 341 F.2d 705, 710, " * * * was not to be looked upon as establishing law on the issue of Section 102 fee awards for that Circuit", as alleged by Respondent, (p. 2 Respondent's motion). In fact, the Sixth Circuit held that courts have differed "widely" on the issue by citing its *McCraw* opinion for, "See General" holdings of courts, (id. 583), thus reiterating its views set forth in *McCraw.* Furthermore, *Sertic* is a "created common monetary fund" issue, with the additional issue as to the amount of attorney fees to be awarded from the created fund of $500,000.00 and due process notice requirements to persons entitled to such fund.

3. As to *Yablonski* v. *United Mine Workers,* 314 F. Supp. 616 (D.D.C. 1970), Respondent fails to mention that the D.C. Circuit, 459 F.2d 1201, decided March 17, 1972, did not reverse on the issue of attorney fees. To the contrary, reversal was solely directed to so much of the District Court's holding which concluded that the death of the plaintiff and the holding of a union election mooted the case. The Circuit, in *per curiam* specifically stated:

> "Neither the holding of the election nor the death of the original plaintiff, rendered moot the claims for actual and punitive damages, or the question of appellants' right to continue the suit in respect of those claims. For this reason, without intimating any view as to the merits of those issues, and without intimating any view as to right of survivorship, we reverse the Order dismissing the complaint as moot insofar as the complaint seeks damages and a right in appellants to continue the suit in that respect, and we remand for further proceedings not inconsistent with this opinion." (id. 1202, 1203)

4. Respondent's motion to dismiss the granted Writ of Certiorari should be denied.

Three copies of this reply have been served upon the attorney for the Respondent.

Respectfully submitted,

HOWARD SCHULMAN, Esq.
Attorney for Petitioners
1250 Broadway
New York, New York 10001
[212] 279-9200

To:

BURTON H. HALL, ESQ.
Attorney for Respondent